

3/24/80

STATE OF MAINE
SUPREME JUDICIAL COURT

Docket No. SJC-53.3

IN RE THOMAS O. BITHER

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OPINION AND DECISION

This bar discipline proceeding was commenced by the filing by the Grievance Commission of the Board of Overseers of the Bar of an information pursuant to Rule 7(e)(4) of the Maine Bar Rules. Acting pursuant to Rule 7(e)(6)(A) the court issued an order to show cause and the respondent timely answered the information. The court held a prehearing conference on the matter at Bangor on Tuesday, February 26, 1980, and the parties subsequently submitted the case to the court for decision on extensive affidavits and memoranda of law. Appearing in the matter are Michael E. Barr, Esq., Bar Counsel, and Thomas L. Goodwin, Esq., counsel for the respondent.

Respondent has conceded that, in violation of Maine Bar Rule 3.3(a), he charged and sued for a fee that was excessive in all the circumstances. Although that misconduct occurred before the Maine Code of Professional Responsibility took effect on May 15, 1979, the standards of conduct prescribed thereby may nonetheless be "considered as advisory" in appraising the respondent's earlier conduct, Rule 3.1(b), and he has recognized that it is proper

to apply them to this proceeding. In view of the limited amount of legal services that he had performed in planning and organizing a "minority business enterprise" and in view of an apparent prior understanding that he would in any event be compensated exclusively by that corporate enterprise, his conduct, taken in isolation, constitutes a serious departure from the norms of conduct demanded of a member of the bar. See 4 M.R.S.A. § 851 (1979). The court must move on to determine the appropriate disciplinary action. Maine Bar Rule 2(e). Because of mitigating circumstances, the appropriate discipline to protect both the public and the courts, Rule 2(a),¹ is here a reprimand.

Evidence has been presented to the court and accepted by Bar Counsel that only three weeks before respondent's misconduct occurred, he had suffered a serious heart attack that necessitated his hospitalization and medication and that adversely affected him emotionally and intellectually, as well as physically. At the time he was a sole practitioner. His action of sending a bill, which he now willingly admits was unjustified, and only three days later bringing suit on it was, this court finds, isolated and aberrant behavior in a twenty-year legal career.

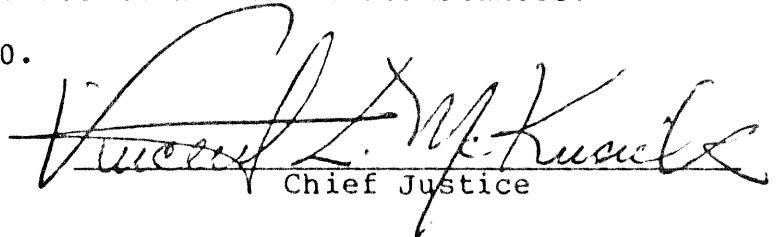
¹ Maine Bar Rule 2(a) provides inter alia:

A proceeding brought against an attorney under these rules shall be an inquiry to determine the fitness of an officer of the court to continue in that capacity. The purpose of such proceeding is not punishment but protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties.

Several affidavits from judges and lawyers attest to his good reputation within the legal community. The respondent is now associated in a law partnership with another experienced attorney.

From the evidence presented by the parties, the court concludes that the risk of the respondent's repetition of professional misconduct is remote, not the least because of lessons learned in this experience. It is not for this court to pass judgment upon the respondent's proposed "minority business enterprise" that never got beyond the planning stage; nor is it for this court to impose mere punishment for his past misconduct in suing for an excessive fee. In this bar discipline proceeding the court's concern must be the future protection of the public and the courts. See note 1 above. To promote that objective, the reprimand contained in this opinion is adjudged to be adequate and otherwise appropriate in all the circumstances.

Dated: March 24, 1980.


Chief Justice